Supreme Court, U.S.
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No. 92-736

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

HIRAM H. HOELZER,

Petitioner,

v.

THE CITY OF STAMFORD, CONNECTICUT.

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

PETITIONER'S REPLY BRIEF

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BEST AVAILABLE COPY

POINT I

THE CITY'S TACIT ADMISSIONS AND LACK OF REPLY TO POINTS OF LAW SUPPORT SUMMARY REVERSAL.

The petition contained a **highlighted challenge** to the City to "point out any perceived misstatements" in the petition (p. 7, fn. 2, quoting Rule 15.1). The City did not do so and, most particularly, did not deny receiving the $557,200 charted claim in **1989** (id.), discussing it with Judge Stanton **that year** (id.), and the petitioner's focus on that in his brief on the second appeal (id., p. 10).

Also unchallenged were the showings that the City knew of this amount when it filed its **1990** brief conceding that the petitioner was "entitled to compensation" (id., p. 9) and that Judge Kaufman relied on this concession both orally and in his opinion (id.).

Q.E.D. That concession disproved

flatly the Circuit Court's statements that the City learned of this only "at the 1992 trial" and the ensuing sole premise that "When it...conceded that Hoelzer should receive some compensation for his labors, the City could not reasonably have expected that Hoelzer would claim nearly as much as $557,200" (A 6).

The City also dealt with none of the legal points raised in the petition.[1]

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1. a. Unanswered is the petition's showing that there is no precedent for the Circuit Court's arrogation of power to modify a decision which it found to have been based on "substantial evidence" and "no error" of law (Petition, p. 15)

b. Unanswered is the petition's charge that this absolute power "threatens all of the legal safeguards in our jurisprudence" (id., p. 30).

c. Unanswered is the petition's showing that the law of the case set on the first appeal was disregarded without any intervening change of circumstances (id., p. 21).

d. Unanswered was the petition's showing that the City's own appraiser testified that, during the years while the City stymied Mr. Hoelzer by this litigation, the value of the mural in the art market dropped sharply (id., p. 32).

All that the City's brief does is to repeat arguments about the merits of the case, to argue that "the Trial Court erred when it rejected the City's arguments... that Hoelzer acted in 'bad faith'" (Brief, p. 14), and to ignore the Circuit Court's contrary finding that there was no error below.[2]

In short, the errors of fact and law attributed to the Circuit Court in the petition stand undenied even though the City was challenged to contravene them. As stated in Supreme Court Practice (Stern, Gressman & Shapiro, 6th ed., 1986):

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2. It is not appropriate here to review all of those repeated arguments, for the City has not filed a cross-petition for ceriorari complaining of the Circuit Court's finding of "no error".

But one pungently misleading statement in the City's brief requires reply, namely, the assertion that "Hoelzer did 80% of the total restoration work after the City demanded that he return the murals" (Brief, p. 7). The record shows exactly the opposite in his testimony, as follows (TR 299): "Q. What percentage of the total job had been completed counting what you did in 1971, '74, '78, and '86 by November of 1986? A. 80%"

> "Summary Disposition Without Opinion...This kind of reversal order usually reflects the feeling of the majority of the Court that the lower court is so clearly erroneous...that full briefing and arguments would be a waste of time." (p. 277).

It is respectfully submitted that the unrefuted critical facts and points of law in the petition call for such summary disposition or, if not, for the granting of certiorari.

THE PETITIONER

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 1992, 3 copies of the foregoing, were mailed, postage prepaid, to James V. Minor, Esq., City of Stamford Law Department, P.O. Box 10152, Stamford, CT 06904-2152.

Stephen A. Wise

Stephen A. Wise, Attorney